



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2005

Mr. Jeffery Young
Associate General Counsel
Texas Tech University System, Suite 2B141
3601 4th Street STOP 6246
Lubbock, Texas 79430-6246

OR2005-04566

Dear Mr. Young:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224863.

The Texas Tech University Health Sciences Center (the "center") received two requests for information on a named person. The first request was for the full autopsy report of the named individual. The second request was for any and all reports, video recordings, audio recordings, telephone logs, tapes of telephone calls, and pictures of the named individual. You state that you will release the autopsy report, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the center has not submitted copies or samples of any video recordings, audio recordings, telephone logs, or tapes of telephone calls regarding the named person. Thus, we assume that any information maintained by the center that is responsive to this request has been released to the requestor, to the extent it exists. If not, the center must release such information immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).*

Now we turn to your arguments regarding the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This

section encompasses information protected by other statutes. Access to EMS records is governed by the provisions of the Emergency Medical Services Act, Health and Safety Code sections 773.091-.173. *See* Open Records Decision No. 598 (1991). Section 773.091 of the Emergency Medical Services Act provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Health & Safety Code § 773.091(b), (g). Upon review, we agree that section 773.091 is applicable to Exhibit G-71. We note however, that section 773.092(e)(4) provides for an exception to confidentiality for “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” Health & Safety Code §§ 773.092(e)(4), .093. Among the individuals authorized to act on the patient’s behalf in providing written consent is a “personal representative” if the patient is deceased. *Id.* Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. You state that the requestor has not provided sufficient evidence that she is the authorized personal representative of the deceased. Accordingly, if the requestor provides sufficient evidence that she is the deceased’s authorized representative, the center must release G-71 to the requestor in its entirety. *See* Health & Safety Code §§ 773.092, .093; *see also* Open Records Decision No. 632 (1995). If the requestor does not provide the proper authorization, then, with the exception of the information subject to 773.091(g), the center must withhold Exhibit G-71 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You claim that the remaining records in Exhibit G and the highlighted information in Exhibit F are medical records, access to which is governed by the Medical Practice Act (“MPA”), chapter 159 of the Occupations Code. Section 159.002 of the Occupations Code provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002 (b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990).

In this case, the patient at issue is deceased. Medical records pertaining to a deceased individual may be released only on the signed consent of the personal representative of the deceased. Occ. Code § 159.005(a)(5). The consent must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). After reviewing the highlighted information in Exhibit F, we find that you have not demonstrated, nor does it appear, that the highlighted information was taken from a medical record. Thus, this information is not a medical record for the purposes of the MPA and may not be withheld on that basis. However, we agree that the remaining information in Exhibit G consists of medical records of the decedent for purposes of the MPA. Accordingly, if the requestor provides sufficient evidence that she is the deceased's authorized representative, the center must release the remaining records in Exhibit G to the requestor. *See* Occ. Code §§ 159.004, .005. If the requestor does not provide the proper authorization, then the center must withhold the remaining records in Exhibit G under section 552.101 of the Government Code in conjunction with the MPA.¹

¹Because of our ruling on Exhibit G, we need not address your other argument for this information.

You claim that Exhibit H is protected by section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. You claim that Exhibit H is protected under this provision as it consists of autopsy photos. However, you state that the decedent died while in custody of the Big Springs Police Department. Accordingly, the center may not withhold Exhibit H under section 11 of article 49.25 of the Code of Criminal Procedure. Thus, you must release Exhibit H.

You claim that Exhibits E and F consist of criminal history record information. Criminal history record information (“CHRI”) is confidential and not subject to disclosure. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, information compiled by a law enforcement agency that depicts a particular individual as a criminal suspect, arrestee, or defendant takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). After reviewing Exhibits E and F, we find that neither contains criminal history record information.

We note that Exhibit E contains motor vehicle record information that is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, you must withhold the Texas-issued motor vehicle record information we have marked in Exhibit E under section 552.130 of the Government Code.

In summary, if the requestor provides sufficient evidence that she is the deceased's authorized representative, the center must release G-71 to the requestor in its entirety. If the requestor does not provide the proper authorization, then, with the exception of the information subject to 773.091(g), the center must withhold Exhibit G-71 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. Additionally, if the requestor provides sufficient evidence that she is the deceased's authorized representative, the center must release the remaining records in Exhibit G to the requestor. If the requestor does not provide the proper authorization, then the center must withhold the remaining records in Exhibit G under section 552.101 of the Government Code in conjunction with the MPA. The center must withhold the Texas-issued motor vehicle record information we have marked in Exhibit E under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 224863

Enc. Submitted documents

c: Jacqui Miller
P. O. Box 939
Green Valley, Arizona 85622
(w/o enclosures)